








LOUISIANA SUPREME COURT

| Justices |  |  |  |  |  |  |  |
|----------------------|---|---|---|---|---|---|---|
| Confidence Score | Mild Republican | Mild Republican | Mild Democrat | Mild Republican | Mild Democrat | Mild Republican | N/A Justice Pro-Tempore |
| Opinion Partners | | | ✓ | | ✓ | | |
| Dissenting Minority | | | | | | | |
| Determining Majority | | | | | | | |
| Lone Dissenter | | | ✓ | | | | |

SUMMARY

- ▶ Number of justices: **7**
- ▶ Number of cases: **47**
- ▶ Percentage of cases with a unanimous ruling: **68.1% (32)**
- ▶ Justice most often writing the majority opinion: **Justice Crichton (5)**
- ▶ Per curiam decisions: **24**
- ▶ Concurring opinions: **18**
- ▶ Justice with most concurring opinions: **Justice Weimer (9)**
- ▶ Dissenting opinions: **30**
- ▶ Justice with most dissenting opinions: **Justice Johnson**

COURT CONTENTION

The Louisiana Supreme Court was one of the most contentious courts in the nation in 2020. At least one justice disagreed with the majority's ruling in 32 cases, which was 68.1 percent of the time the court issued a ruling. At least one justice dissented in 24 cases.

Opinion partners

The two justices who allied most often were Justices Boddie and Genovese, who allied in the majority in 36 cases.

⁴ Justice Boddie was a retired justice who filled the seats of Justices Clark and Hughes throughout the year. Because Boddie was retired at the time of our *Ballotpedia Courts: State Partisanship* study, he did not record a Confidence Score.

The two justices who allied with one another most often in dissent were Justices Johnson and Weimer. Justices Johnson and Weimer dissented together three times, which was 12.5 percent of all cases with dissents. In our *Ballotpedia Courts: State Partisanship* study, Johnson recorded a Mild Democratic Confidence Score and Weimer recorded a Mild Democratic Confidence Score.

Court Dissenting minority

Ballotpedia did not identify a court dissenting minority because no three justices consistently ruled together in the minority in split decisions. In 2020 three decisions were decided 4-3. In each of those decisions a different group of justices formed the majority. No justice was in the minority in all three of those decisions. Only two justices were in the dissent in two of the split decisions: Justices Johnson and Weimer.

Determining majority

In the three split decisions issued by the Louisiana Supreme Court in 2020, no four justices were consistently in the majority. No justice was in the majority in all three of the split decisions.

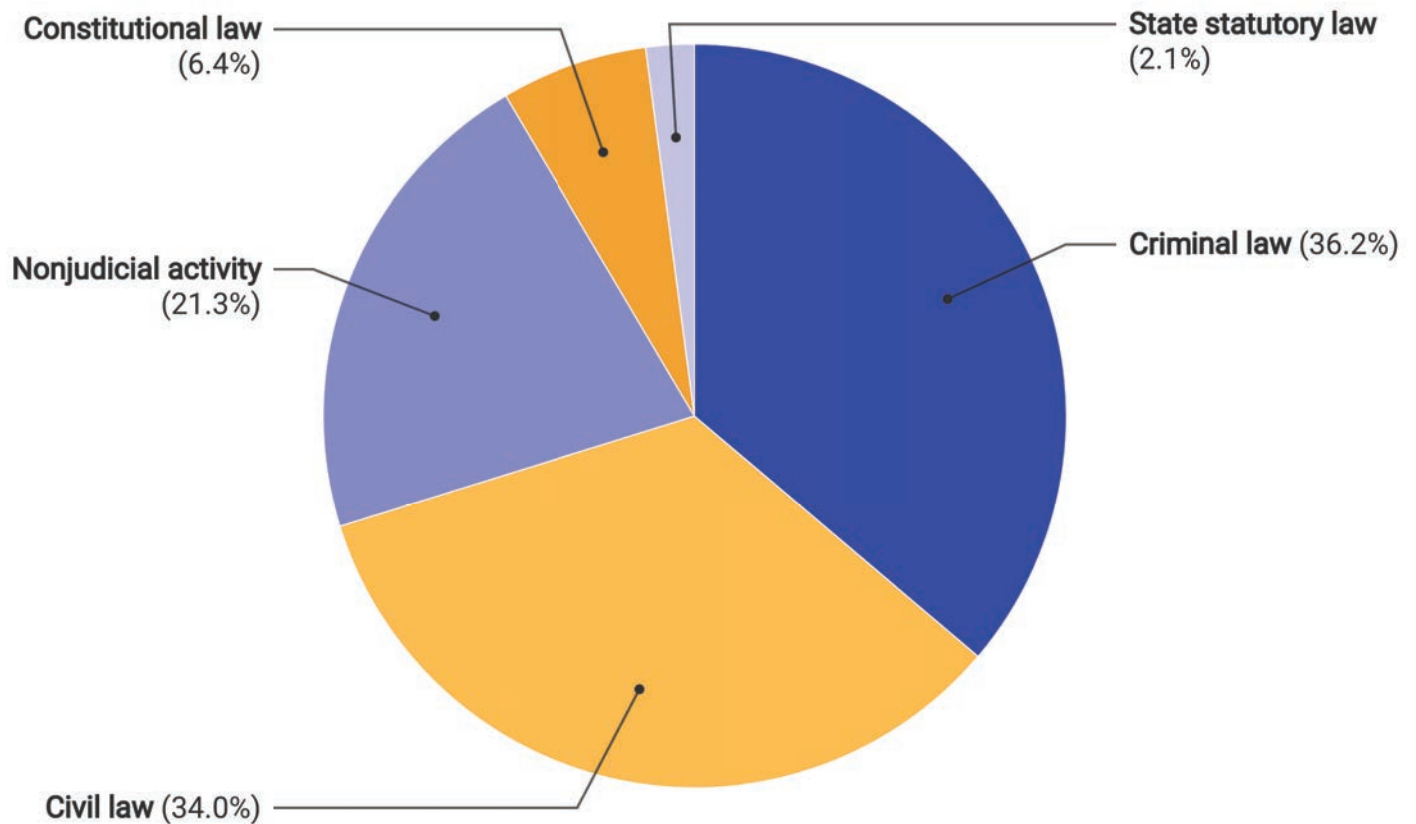
Lone dissenter

In 2020, Justice Johnson dissented alone seven times, which was more than any other justice. There was a lone dissenter in 16 cases. Justice Crain was a lone dissenter second most frequently. Crain dissented alone six times in 2020.

COURT JURISDICTION

The Louisiana Supreme Court has discretionary jurisdiction in civil and criminal cases. Prior to 1982, criminal appellate jurisdiction was within the jurisdiction of the Louisiana Supreme Court; however, with a constitutional amendment that became effective on July 1, 1982, this jurisdiction was transferred to the courts of appeal. The only exception to this is in cases where the death penalty has been imposed.

Case types decided by Louisiana Supreme Court, 2020



BALLOTPEDIA

The most common types of cases heard by the Louisiana Supreme Court in 2020 were criminal cases. Of the 47 cases it heard 17 were criminal cases, which was 36.2 percent of its caseload for the year. A criminal case involves a final criminal appeal before the court of last resort.

The second most common cases that reached the supreme court were civil cases. A civil case is one that involves a dispute between two parties, one of whom seeks reparations or damages. The Louisiana Supreme Court heard 16 civil cases in 2020, or 34 percent of its total caseload for the year.

The third most common cases that reached the court were nonjudicial. A case is considered nonjudicial activity if it does not involve a formal hearing and discussion before the court. We considered 10 of the cases heard by the Louisiana Supreme Court as nonjudicial activity, which was 21.3 percent of its total caseload for the year.

PROMINENT CASES

Holcomb v. City of Bloomington

| Justice | Scott Crichton | Jefferson Hughes | Bernette Johnson | James Genovese | John L. Weimer | William J. Crain | James Boddie ⁴ |
|-----------------------------------|------------------------------|--------------------------|------------------------------|--------------------------|------------------------------|--------------------------|---------------------------|
| Rismiller v. Gemini Insurance Co. | Writing a dissenting opinion | Joining majority opinion | Writing a concurring opinion | Joining majority opinion | Writing a dissenting opinion | Joining Weimer's dissent | Writing majority opinion |

- ◆ **Contention:** Justice Boddie wrote the majority opinion. He was joined by Justices Genovese and Hughes. Justice Johnson wrote a concurring opinion. Justice Weimer wrote a dissenting opinion and was joined by Justice Crain. Crichton wrote a separate dissenting opinion.
- ◆ **Summary:** In 2015 an eighteen wheeler collided with a vehicle driven by Richard Stewart. Stewart was killed as well as two of his children, who were his passengers. Following the accident three separate wrongful death suits were filed in district court. Two of the suits were presented by or on behalf of Daniel Goins and David Watts, who were given for adoption by the Stewarts when minors. Goins was adopted by Mr. Stewart's aunt and uncle. Watts was adopted by his maternal grandparents. The driver of the truck and the truck's owner as well as its insurer claimed that Goins and Watts had no right of action. A court of appeal ruled that children given up in adoption are divested of their legal rights except as those relating to inheritance. The Louisiana Supreme Court ruled that Goins and Watts were children of the deceased and siblings of the deceased who were permitted to bring wrongful death and survival actions arising from the deaths of their biological father and half-siblings.
- ◆ **Majority Argument:** Justice Boddie wrote: "we hold that based on the clear and unambiguous language of La. C.C. arts. 2315.1 and 2315.2, Mr. Watts and Mr. Goins, the biological children given in adoption, are 'children of the deceased' and 'brothers of the deceased' who are permitted to bring wrongful death and survival actions arising from the deaths of their biological father and half-siblings. Thus, the district court properly overruled." (*Rismiller v. Gemini Insurance Co.*, No. 2020-CA-0313, 10 (La. 2020))
- ◆ **Johnson's Concurring Argument:** Justice Johnson wrote: "I write separately to express my opinion that any holding to the contrary would also be inconsistent with the general constitutional principles set forth by this court in *Warren v. Richard*, 296 So. 2d 813 (La. 1974). In *Warren*, the court addressed whether an illegitimate child could recover for the wrongful death of her biological father when, at the same time, she was also the legitimate child of another man under the law. *Id.* at 815. Relying on United States Supreme Court jurisprudence, this court found the child had a right to recover under La. C.C. art. 2315." (*Rismiller v. Gemini Insurance Co.*, No. 2020-CA-0313, 2 (La. 2020))
- ◆ **Weimer's Dissenting Argument:** Justice Weimer wrote: "the

defendants' exceptions raising the objection of no right of action, and the plaintiffs' corresponding objections have required an examination of how adoption affects the construction and constitutionality of the Civil Code's provisions for wrongful death and survival actions. As constructed, the wrongful death and survival provisions, Articles 2315.1 and 2315.2, contain lists of eligible claimants. Those lists include children 'by adoption,' a term which refers to children who have been added to a parental relationship—a relationship with the adoptive parents owing manifold duties to those children. See La. C.C. art. 199. No longer included in the lists of claimants established in Articles 2315.1 and 2315.2 are 'children given in adoption,' a term which refers to the transfer of children out of one parental relationship into a different and new parental relationship. See La. C.C. art. 199. The legislature's removal of 'children given in adoption' from the lists of eligible claimants for wrongful death and survival actions is the clearest indicator of the legislature's intent." (*Rismiller v. Gemini Insurance Co.*, No. 2020-CA-0313, 17 (La. 2020))

- ◆ **Crichton's Dissenting Argument:** Justice Crichton wrote: "I write separately to highlight that the majority's interpretation would lead to an absurd result, as it has the potential to double the rights of a child given in adoption by maintaining their rights in conjunction with their biological as well as adoptive parents. With respect to the wrongful death and survival action statutes, for example, a child given in adoption would collect twice the amount as a child not given in adoption if both their biological and adoptive parents were killed by the fault of others. See C.C. art. 2315.1 (defining 'child' to include children by adoption); C.C. art. 2315.2 (same). This is contrary to the intent of the law, which is to equalize children given in adoption unless otherwise provided. See C.C. art. 199 (providing that exceptions to the termination of filiation may be provided by law and including therein an express exception for inheritance rights). Because I do not believe the legislature intended to carve out an exception to C.C. art. 199 simply by the use of the terms 'child' and 'children,' and for the reasons more fully provided by Justice Weimer, I dissent." (*Rismiller v. Gemini Insurance Co.*, No. 2020-CA-0313, 2 (La. 2020))

DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Parish d/b/a North Oaks Medical Center et al.

| Justice | Scott Crichton | Jefferson Hughes | Bernette Johnson | James Genovese | John L. Weimer | William J. Crain | James Boddie ⁴ |
|--|--------------------------|------------------------------|------------------------------|------------------------------|--------------------------|------------------------------|---------------------------|
| DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Parish d/b/a North Oaks Medical Center et al. | Writing majority opinion | Writing a dissenting opinion | Writing a dissenting opinion | Writing a dissenting opinion | Joining majority opinion | Writing a concurring opinion | Joining majority opinion |

- ◆ **Contention:** Justice Crichton wrote the majority opinion. He was joined by Justices Boddie and Weimer. Justice Crain wrote a concurring opinion. Justices Genovese, Hughes, and Johnson wrote separate dissenting opinions.
- ◆ **Summary:** In 2011 Earnest Williams was injured in a motor vehicle accident and sought emergency medical treatment from North Oaks Hospital. At the time of the accident Williams was insured under an insurance policy administered by Louisiana Health Service & Indemnity Company Blue Cross and Blue Shield of Louisiana. North Oaks is a contracted provider with Williams' insurance company. North Oaks filed a claim with the insurance company and the insurance company paid a discounted rate. North Oaks then tried to collect from Williams by filing a medical lien against his liability insurance claim for the full and undiscounted charges. Williams petitioned and alleged that North Oaks filed this lien despite being a contracted provider with the insurance company and despite contractual obligations to accept insurance as payment in full. Williams sought relief for violation of the Balance Billing Act, breach of contract, and declaratory relief. A trial court denied the exceptions of no right of action for breach of contract and prescription, but granted North Oaks exception of no cause of action for claims arising before the effective date of the Balance Billing Act. An appellate court denied North Oaks' writ application insofar as it related to the trial court's denial of its exception of prescription. After review, the Supreme Court determined plaintiff's claims were delictual in nature, subject to a one-year prescriptive period.
- ◆ **Majority Argument:** Justice Crichton wrote: "As noted by the court of appeal and as explained above, Williams' petition is silent as to the date the alleged violation of the Balance Billing Act by North Oaks occurred. Further, no evidence was introduced at the hearing on the exception of prescription. Accordingly, we also affirm the court of appeal's reversal of the trial court judgment granting North Oaks' exception of prescription and remand to the trial court, solely to determine the date of the alleged violation and conduct proceedings in accordance with this opinion." (*DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Par.*, No. 2019-C-01496, 13 (La. 2020))
- ◆ **Crain's Concurring Argument:** Justice Crain wrote: "The majority correctly recognizes that the duty not to balance bill is a statutory one, which did not exist before the enactment of the statute. In fact, as pointed out by Justice Crichton, before the Balance Billing Act was enacted there was positive law allowing balance billing. You cannot have an implied duty to not balance bill in the face of positive law allowing for it. For the reasons set forth in the majority opinion, I agree the action created by the Act is delictual and carries a one-year prescriptive period." (*DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Par.*, No. 2019-C-01496, 3 (La.

2020))

- ◆ **Johnson's Dissenting Argument:** Justice Johnson wrote: "The Balance Billing Act prohibits a health care provider from collecting or attempting to collect amounts from an insured patient in excess of the contracted insurance rate with the insurer—a practice commonly known as balance billing. Although this prohibition against balance billing is codified in statute, I find a patient's claim against a healthcare provider for violations of the Act sound in contract, not tort, and should be governed by a 10-year prescriptive period." (*DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Par.*, No. 2019-C-01496, 1 (La. 2020))
- ◆ **Hughes' Dissenting Argument:** Justice Hughes wrote: "The Constitution provides in Article I, Section 10 that no state shall pass any law impairing the obligation of contracts. Whether the Legislature allows or prohibits balance billing must be seen as subservient to the contracts at issue. If the hospital sues the patient after receiving partial payment from the insurer, the patient can implead the insurer, who can implead the hospital, and the hospital is stuck with the payment agreed to by contract with the insurer." (*DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Par.*, No. 2019-C-01496, 1 (La. 2020))
- ◆ **Genovese's Dissenting Argument:** Justice Genovese wrote: "I respectfully dissent from the majority opinion in this matter. The genesis of this cause of action is rooted in contract. There are three separate contracts: (1) the contract between the insured and his/her health insurance carrier; (2) the contract between the health insurance carrier and the hospital; and, (3) the implied contract between the hospital and the insured upon admission for the service rendered. Additionally, the statute does not provide for a specific prescriptive period. Therefore, we must look to La.Civ. Code art. 3499 which provides that '[u]nless otherwise provided by legislation, a personal action is subject to a liberative prescription of ten years' as a default setting. It is also important to note that our jurisprudence requires that a claim of prescription be strictly construed. *Wells v. Zadeck*, 11-1232, pp. 6-7 (La. 3/30/12), 89 So.3d 1145, 1149 (citing *Carter v. Haygood*, 04-0646 (La. 1/19/05), 892 So.2d 1261; *Bailey v. Khoury*, 04-0620 (La. 1/20/05), 891 So.2d 1268). Thus, I find the ten-year prescriptive period applicable in this matter and would reverse the court of appeal." (*DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Par.*, No. 2019-C-01496, 1-2 (La. 2020))

C/W 2018-C-00956 W&T OFFSHORE, L.L.C. VS. TEXAS BRINE CORPORATION AND TEXAS BRINE COMPANY, L.L.C. C/W TEXAS BRINE COMPANY, L.L.C. VS. W&T OFFSHORE, L.L.C.

| Justice | Scott Crichton | Jefferson Hughes | Bernette Johnson | James Genovese | John L. Weimer | William J. Crain | James Boddie ⁴ |
|--|----------------------------|------------------------------|--------------------------------------|----------------------------|------------------------------|----------------------------|---------------------------|
| C/W 2018-C-00956 W&T OFFSHORE, L.L.C. VS. TEXAS BRINE CORPORATION AND TEXAS BRINE COMPANY, L.L.C. C/W TEXAS BRINE COMPANY, L.L.C. VS. W&T OFFSHORE, L.L.C. | Joining per curiam opinion | Writing a concurring opinion | Dissented without writing an opinion | Joining per curiam opinion | Writing a dissenting opinion | Joining per curiam opinion | Joining Weimer's dissent |

- ◆ **Contention:** The majority opinion was a per curiam opinion. Justices Crain, Crichton, and Genovese joined in the per curiam opinion. Justice Hughes wrote a concurring opinion. Justice Weimer wrote a dissenting opinion and was joined by Justice Boddie. Justice Johnson dissented without writing an opinion.
- ◆ **Summary:** Texas Brine Corp. was the holder of a pipeline servitude. Texas Brine constructed a replacement underground pipeline with a slightly larger diameter and installed that pipeline eight feet away from the original pipeline. W&T argued that Texas Brine had to pull up the old pipeline and lay a new pipeline in the same location as the previous place. W&T sought millions in damages from Texas Brine. A district court issued a judgment in favor of Texas Brine, finding that it had the right to replace the pipeline. The Louisiana Court of Appeal for the First Circuit reversed the district court's decision. The court of appeal found that Texas Brine had the right to relocate the pipeline, but the widening of the diameter of the pipeline constituted a trespass. The Louisiana Supreme Court reversed the court of appeal's decision and reaffirmed the district court's decision, ruling in favor of Texas Brine.
- ◆ **Majority Argument:** The per curiam opinion reads: "We granted defendants' application for rehearing in this case on October 15, 2019. After receiving briefing from the parties and reviewing the record of the matter, we recall our order of October 15, 2019 as improvidently granted, and we deny defendants' application for rehearing." (*W&T Offshore, L.L.C. v. Texas Brine Corp.*, No. 2018-C-00956, 1 (La. 2020))
- ◆ **Concurring Argument:** Justice Hughes wrote: "The uncontroverted testimony at trial was that removing the old pipe and dragging it out through the swamp would be more damaging to the environment than leaving it in place and using an additional eight feet to lay new pipe, the industry standard. Replacing the pipe in the original trench would cause additional economic damage to the landowners by necessarily halting the flow of brine. Texas Brine chose the most reasonable option, least burdensome to the landowners, to fulfill its obligations under the contract in an environmentally safe and economically feasible fashion." (*W&T Offshore, L.L.C. v. Texas Brine Corp.*, No. 2018-C-00956, 1-2 (La. 2020))

- ◆ **Dissenting Argument:** Justice Weimer wrote: “This matter involves a quintessential civilian analysis, based on an agreement and provisions of the Louisiana Civil Code related to property law. This court’s original consideration of this case resulted in a per curiam opinion that declared which litigant prevailed, but does not discuss the law, nor address the facts. The role of a court is primarily to resolve disputes between the immediate parties, but appellate courts and the supreme court write opinions to provide guidance so that the litigants and others similarly situated know how the law applies, and can conduct their affairs accordingly. Property law demands stability, predictability, and clarity. Such a goal is particularly true in this case given the prevalence of pipelines throughout Louisiana and the impact the right-of-use laws have on industries and property owners throughout our state.” ([W&T Offshore, L.L.C. v. Texas Brine Corp.](#), No. 2018-C-00956, 2 (La. 2020))